FILED

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NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

William S. Collins

Petitioner

v.

State of Maine

Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME JUDICIAL COURT
FOR THE STATE OF MAINE

PETITION FOR WRIT OF CERTIORARI

William S. Collins Pro se
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19 pp

QUESTIONS PRESENTED

1. Whether the imposition of State sanctions and liability for failure to file State income tax returns, (in turn premised on asserted Federal Income Tax liability, 26 U.S.C. 7202), violated the United States Constitution's Separation of Powers provision under Article I Section 10 by legislatively creating an irrebuttable presumption binding on courts, (as if the Government were acting not on Petitioner's Constitutional Rights but only administratively), that Petitioner had conveyed Petitioner's estate as a gift into a charitable trust via 36 M.R.S. and incurred reciprocal obligations necessarily implied by such a conveyance.

2. Whether the State court judgment imposes obligations upon the Petitioner unilaterally without consent, consideration and, more significantly, without personal jurisdiction, all in violation of Due Process under the 14th Amendment because there are no minimum contacts sufficient to have provided the State court with personal jurisdiction over the Petitioner.

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BRIEF FOR PETITIONER

OPINIONS BELOW

Superior court's order, filed June 28, 1996, appears in Appendix A-1, infra.

Supreme judicial court order, filed February 20, 1997, appears in Appendix at A-3, infra.

JURISDICTION

The supreme judicial court in this matter denied petitioner's appeal. This Court's jurisdiction is invoked under Title 28 U.S.C. 1257 (a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Article I Section 10 of the Constitution of United States of America provides in pertinent part:

> No State shall enter into any ... Law impairing the Obligation of Contracts,

2. Amendment 14 of the Constitution of United States of America provides in pertinent part:

> ... nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

3. *H.J.R. 192 73 RD CONG., 1ST SESSION (48 STAT 113) JUNE 5, 1933 TO WIT:*

Joint resolution to assure uniform value to the coins and currencies of the United States.

Whereas the holding of or dealing in gold affect the public interest, and are therefore subject to proper regulation and restriction; and

Whereas the existing emergency has disclosed that provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby, obstruct the power of the Congress to regulate the value of the money of the United States, and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts. Now, therefore, be it.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States is hereby repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law.

(b) As used in this resolution, the term "obligation" means an obligation (including every obligation of and to the United States, excepting currency) payable on money of the United States; and the term "coin or currency" means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations.

Sec. 2. The last sentence of paragraph (1) of subsection (b) of section 43 of the Act entitled "An Act to relieve the existing national economic emergency by increasing agriculture purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agriculture indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes." approved May 12, 1933, is amended to read as follows:

"All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal

Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues, except that gold coins, when below the standard weight and limit of tolerance provided by law for the single piece, shall be legal tender only at valuation in proportion of their actual weight."

Approved, June 5, 1933, 4.40 p.m.

4. 36 § 5332. M.R.S. Failure to file return, supply information, pay tax

> Any person required under this Part to pay any tax or estimated tax, or required by this Part or regulation prescribed thereunder to make a return, other than a return of estimated tax, keep any records or supply any information, who intentionally fails to pay that tax or estimated tax, make the return, keep the records or supply information, at the time or times required by law or regulation, shall in addition to other penalties provided by law, be guilty of a Class D crime. In determining whether a person is required to make a return under this Part, proof that the person filed a federal tax return for a taxable year shall give rise to a presumption that the person was required to file a federal income tax return for that taxable year.
> 1983, c. 490.

5. 26 U.S.C. § 7202 Willful Failure to Collect or pay over Tax

> Any person required under this title to collect, account for, and pay over any tax imposed by this title .....

STATEMENT OF THE CASE

6/15/94: Petitioner was prosecuted criminally and found guilty of violating 36 § 5332 M.R.S.A., three (3)

counts of failing to file state income tax returns for the years 1988, 1991, 1992.

6/28/96: Superior court found petitioner guilty of the three counts, counts two and three were suspended. First count of one year suspended except for 120 days in prison, which has been served, plus $35,305.46 restitution which is being paid at the rate of $1000.00 per month "under protest".

Petitioner preserved each point raised herein below by standing mute in the proceeding after raising the issue by Brief and Memorandum claiming the state had neither personal nor subject matter jurisdiction based upon the fact that the state failed to provide a voluntary nexus with petitioner in pre trial motions.

2/20/97: The supreme judicial court held:

1. Petitioner was subject to the criminal laws of the state.

2. Petitioner was subject to the jurisdiction of the courts in which he was prosecuted.

3. That there was sufficient evidence on which to base the convictions.

The issue presented by petitioner of Article I Section 10 as it relates to petitioners right of contract, the Due Process clause with its minimum contacts standard under the 14th Amendment, and 48 U.S. Stat 113 were not addressed by the decision below.

REASONS FOR GRANTING WRIT

THE SUPREME JUDICIAL COURT HAS IGNORED A FEDERAL QUESTION IN TOTAL DISREGARD OF APPLICABLE DECISIONS OF THIS COURT

Maine Revised Statute 36 § 5332 states in pertinent part, "Any person required under this Part... . In determining whether a person is required to make a return under this Part, proof that the person filed a federal tax return for a taxable year shall give rise to a presumption that the person was required to file a federal income tax return for that taxable year." Appears at p. 4 supra.

The statute does not say everybody is required to file. There is a presumption that because there is an alleged conveyance of petitioner's estate as gift in trust to the State or United States for one or more years prior to 1988, petitioner therefore must make a gift in trust to the state, fill out the tax form, and pay the tax for the years that petitioner did not file and was prosecuted for.

Mandatory irrebuttible presumptions deny Due Process in criminal cases. See generally "*The Irrebuttable Presumption Doctrine in the Supreme Court,*" 87 Harv. L. Rev. 1534 (1974); "*Note, Irrebuttable Presumptions: An Illusory Analysis,*" 27 Stan. L. Rev. 449 (1975).

Petitioner is unable to discover anything within 48 U.S. Stat 113, or the Constitution of United States that allows the lower court to breach petitioner's contractual rights to his property under the Constitution, then fashion a charitable trust for the benefit of the state. "Gold clause" does not render contract invalid but merely renders such gold clause inoperative, and rights of parties are same as if

obligation were originally payable in dollars and cents generally, *Nortz v. United States* (1935) 294 U.S. 317. This Court also stated in *Funk v. United States* 290 U. S. 371 (1933), that 48 U.S. Stat. 113 is mutable at will, and, State cannot interfere with private rights *Dartmouth College v. Woodward*, 4 Wheat 518 (1819). "An indefinite or uncertain trust res is fatal to the trust as no subject matter whatever." *Law of Trusts,* 5th ed. by Bogart at p. 72 (1981).

In essence the decision below has stated that, petitioner has no will of his own to determine his own destiny and provide for himself at the present or in the future; that petitioner will be a ward of the state.

THE LOWER COURT IGNORED ITS OWN DECISION CONCERNING THE 14TH AMENDMENT DUE PROCESS CLAUSE WITH ITS MINIMUM CONTACTS STANDARDS AND THIS COURT'S PRECEDENTS TO IMPOSE A UNILATERAL PRIVILEGE WITHIN THE STATE'S PRIVATE FORUM

In *Hanson v. Denckla*, 357 U.S. 235 (1958), this Court stated that it is the defendant's, not the plaintiff's contacts with the forum which are pivotal to a Due Process analysis:

> *The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State* ... [I]t is essential that in each that there be some act by which the *defendant* purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.

357 U.S. at 253 (emphasis added). Nor may the defendant's contacts "result solely from the 'unilateral activity of another party.'" *Electronic Media v. Pioneer Communications of America Inc.* (1991) Me., 586 A.2d 1256, quoting *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408.

The principle that only the defendant's contacts with the forum are relevant in a due process analysis was only recently reaffirmed by this Court in *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985):

> Jurisdiction is proper ... where the contacts proximately result from actions by the defendant *himself* that create a 'substantial connection' with the forum State.

(Emphasis in original); see also *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. __, 94 L.Ed.2d 92, 102 (1987).

Notwithstanding the issue of an intangible conveyance of petitioner's estate, the state failed to prove in pre trial motions that petitioner had contracted to a tangible beneficiary privilege with the state; that physically residing in the State of Maine is a privilege, and yet the decision below reflects otherwise.

THE STATE JUDICIARY ASSUMES THE POWER OF THE EXECUTIVE AND LEGISLATURE TO DESTROY CONSTITUTIONAL SEPARATION OF POWERS AND PETITIONER'S WILL

A Judiciary free from control by the Executive and Legislature is essential if there is a right to have claims decided by judges who are free from potential domination

by other branches of government. *United States v. Will*, 449 U.S. 200, 217-18 (1980). Alexander Hamilton, writing in *The Federalist* No. 79, explained the Framers' reasoning for this means of protecting the separation of powers: "In the general course of human nature, a power over a man's subsistence amounts to a power over his will." *The Federalists* No. 79, at 472 (Clinton Rossiter ed., 1961) (emphasis omitted).

As early as 1782 Jefferson told Monroe that it was ridiculous to suppose that a man should surrender himself to the state. "This would be slavery, and not that liberty which the bill of rights has made inviolable, and for the preservation of which our government has been changed." Freedom, said Jefferson, would be destroyed by "the establishment of the opinion that the state has a *perpetual* right to the services of all it's members." Jefferson to Monroe, May 20, 1782, *Jefferson Papers* , IX, p. 380, Boyd, Edition. Excerpt from the book *The Creation of the American Republic*, 1776-1787 (p. 610) by Gordon S. Wood, ISBN 0-393-00644-1, 1969. Justice Blackmun cites page 79 of Wood's book in *Freytag v. C.I.R.* , 111 S.Ct. 2631 (1991). The leading Framers of our Constitution viewed the principle of separation of powers as the central guarantee of a just government. James Madison put it this way: "No political truth is certainly of greater intrinsic value or is stamped with the authority of more enlightened patrons of liberty." *The Federalist* No. 47, p. 324 (J. Cooke ed.1961).

"The individual may stand upon his constitutional rights as a citizen. He is entitled to carry on his own private business in his own way. His power to contract is unlimited. He owes no duty to the State or to his neighbors to divulge his business, or to open his doors to an investigation, so far as it may tend to criminate him. He owes no such duty to the State, since he receives nothing therefrom, beyond the protection of his life and property. His rights are such as existed by the law of the land long antecedent to the organization of the State . . . He owes nothing to the public so long as he does not trespass upon their rights." *Hale v. Henkel,* 201 US 43 (1905). (Emphasis added)

The lower court's actions flies in the face of our Constitutional Republic as evidenced by *The Federalists Papers, Jefferson Papers* , Federal statutory law, and the repeated decisions of this Court thus denying fundamental justice by failing to address the federal questions.

Finally, review of the decision below is important because of the continuing unconstitutional restraints the states place upon those "individuals" who march to the beat of a different drummer.

The lower court has so far departed from the accepted and usual course of judicial proceedings to call for the exercise of this Court's supervisory power.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Date: May 2, 1997

William S. Collins

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207 443 2476

STATEOF MAINE
JUDGMENT AND COMMITMENT
SUPERIOR COURT

Docket No.	County	Date	DOB
CR-94-216	Sagadahoc	6/28/96	
	4/12/41		

State of Maine v. Defendant's Name William S. Collins

Residence 40 Union St., Bath, Maine

Offense(s) charged

Charged by complaint:

Cts 1-3 Failure to File Maine Income Tax Returns
T. 36 § 5332 Class "D"

Convicted on:
court finding

Offense(s) convicted:
Failure to File Maine Income Tax Return (3 Cts.)
T. 36 § 5332
Class "D"

IT IS ADJUDGED THAT THE DEFENDANT BE HEREBY COMMITTED TO THE SHERIFF OF THE WITHIN NAMED COUNTY OR HIS AUTHORIZED REPRESENTATIVE WHO SHALL WITHOUT NEEDLESS DELAY REMOVE THE DEFENDANT TO:

The County jail to be punished by imprisonment for a term of as to Count 1, 9 months

This sentence to be served consecutive to as to counts 2 and 3, 9 months consecutive to Count 1.

Ct. 2 & 3 all susp.
IT IS ORDERED THAT ALL (BUT) 120 DAYS (CT 1) OF THE FOREGOING SENTENCE BE SUSPENDED AND THE DEFENDANT BE COMMITTED TO THE

CUSTODY AND CONTROL OF THE DIVISION OF PROBATION AND PAROLE FOR A TERM OF 1 YEAR ON EACH COUNT, EACH COUNT CONSECUTIVE.

IT IS FURTHER ORDERED THAT THE DEFENDANT PAY AN ASSESSMENT OF $10.00 FOR EACH CLASS D AND E CONVICTION AND $25.00 FOR EACH MURDER AND CLASS A, B, AND C CONVICTION FOR A TOTAL OF $30.00 TO THE CLERK OF THE COURT FOR THE VICTIMS COMPENSATION FUND, (5 M.R.S.A. § 3360-1)

Execution/payment stayed to within 1 year probation.

IT IS ORDERED THAT THE DEFENDANT FORFEIT AND PAY THE SUM OF $35,305.46 DOLLARS AS RESTITUTION, THROUGH THE (DIVISION OF PROBATION AND PAROLE) (DISTRICT ATTORNEY'S OFFICE) FOR THE BENEFIT OF STATE OF MAINE AT THE RATE OF $1,000.00 PER MONTH. (17-A M.R.S.A. § 1152-2-A)

Execution/payment stayed to 35 months probation

A TRUE COPY, ATTEST: /s/

I understand the sentence imposed herein and acknowledge receipt of a copy of this JUDGMENT AND COMMITMENT

Dated: 6/28/96
under protest /s/William S. Collins
Defendant

MAINE SUPREME JUDICIAL COURT
Mem 97-30
Docket: SAG-95-767
Submitted on briefs February 10, 1997
Decided February 20, 1997

Panel: WATHEN, C.J., and GLASSMAN, CLIFFORD, RUDMAN, DANA, and LIPEZ, JJ.

STATE OF MAINE

V.

WILLIAM S. COLLINS

MEMORANDUM OF DECISION

William S. Collins appeals from judgments entered in the Superior Court (Sagadahoc County, Cole, C.J.) following a jury-waived trial at which he was found guilty of three counts of failure to file an income tax return in violation of 36 M.R.S.A. § 5332 (1990) (Class D). Contrary to Collins contentions, his actions were subject to the criminal law of this State, 17-A M.R.S.A. § 7 (1983), he was subject to the jurisdiction of the courts in which he was prosecuted, 4 M.R.S.A. §§ 105, 165 (1989) & Supp. 1996), 17-A M.R.S.A. § 9(3) (19830, 15 M.R.S.A. §§ 1, 2114 (1980 & Supp. 1996), there was sufficient evidence on which to base the convictions, *State v. Barry*, 495, A2d 825, 826 (Me. 1985), and the court properly declined to address his counterclaim, M.R. Civ. P. 12(a).

The entry is:

Judgments affirmed.